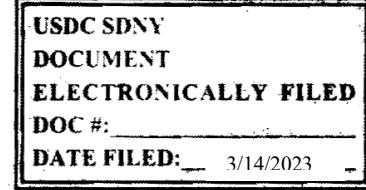


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EMERGENCY PHYSICIAN SERVICES OF
NEW YORK, et al.,

Plaintiffs,

20-CV-09183 (JGK)(SN)

-against-

ORDER

UNITEDHEALTH GROUP, INC., et al.,

Defendants.

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SARAH NETBURN, United States Magistrate Judge:

Defendants seek a court order compelling non-party witness Dr. Robert Galvin to testify for seven hours on certain topics. ECF Nos. 338, 354. Dr. Galvin has agreed to testify for three hours on a limited set of topics. ECF No. 350.

Dr. Galvin is a member of the board of directors of TeamHealth Holdings, Inc. ("THHI"), which is a national emergency medicine service provider and corporate affiliate of TeamHealth Plaintiffs. THHI is owned by Blackstone. Dr. Galvin was involved in the negotiations between THHI and Defendants regarding the parties' dispute over reimbursement rates that led to this lawsuit. Before July 2021, Dr. Galvin was also the CEO of Equity Healthcare LLC, a subsidiary of Blackstone that advises clients, including Plaintiffs, on healthcare purchases and negotiates on their behalf with healthcare providers like Defendants. In addition to advising Plaintiffs, Equity Healthcare also advises companies within the Blackstone portfolio (the "portfolio companies") about healthcare purchases. The portfolio companies are companies in which Blackstone has made a financial investment and which operate in a variety of industries.

Dr. Galvin has agreed to testify about (1) negotiations between Defendants and THHI in connection with an April 2019 meeting (“Topic 1”); (2) Blackstone’s involvement, if any, in Plaintiff’s price setting, financial performance targets, and profits distribution (“Topic 2”); and (3) Equity Healthcare’s role in coordinating healthcare for Plaintiffs, including deliberations about cost control, selection of out-of-network programs and shared savings fee arrangements (“Topic 3”). He has refused to testify about (A) analysis of market rates performed for THHI (“Topic A”) and (B) the portfolio companies’ decisions regarding healthcare purchases (“Topic B”).

Dr. Galvin is highly knowledgeable about market rates in the healthcare industry and the risks and benefits of various healthcare programs, including out-of-network and shared savings programs. He must testify about his knowledge and experience in this space, including his analysis of market rates and the considerations he weighs when advising clients, generally, on healthcare purchases. Such testimony, however, should not probe into the confidential and commercially sensitive deliberations between Equity Healthcare and the portfolio companies (or other non-party entities). To the extent Defendants intend at trial to establish that certain portfolio companies selected healthcare programs that the Plaintiffs challenge in this lawsuit, Defendants already have such information and are not entitled to the confidential communications that led to their selections.

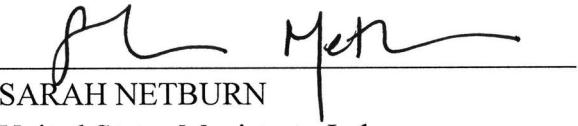
Finally, Rule 30(d)(1) establishes a presumptive seven-hour limit for a deposition. Dr. Galvin has not established good cause to justify a deviation from this rule. He has not argued that his deposition is for an improper purpose, and he does not deny that Defendants have agreed to use this deposition for six related THHI lawsuits against Defendants and their affiliates. Further, his testimony likely concerns key issues.

CONCLUSION

Defendants' subpoena is modified to exclude Dr. Galvin's testimony concerning communications with and negotiations on behalf of the portfolio companies ("Topic B"). Dr. Galvin, however, must testify generally about his knowledge and experience regarding market rate analysis ("Topic A") and the at-issue healthcare programs, including out-of-network and shared savings programs. Dr. Galvin's deposition is limited to seven hours. The Clerk of Court is requested to terminate the motion at ECF No. 338.

SO ORDERED.

DATED: New York, New York
 March 14, 2023



SARAH NETBURN
United States Magistrate Judge